IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.3479 OF 2006
WITH
CRIMINAL APPLICATION NO.3480 OF 2006
WITH
CRIMINAL APPLICATION NO.3481 OF 2006
WITH
CRIMINAL APPLICATION NO.3482 OF 2006

Chandrakant Dinkar Patil ...Applicant.
V/s.
D.G.Panari & Anr. ...Respondents.

Smt.Gauri Jadhav, adv. for the Applicant.
Shri Indrajeet Joshi, adv. for the Respondent No.1.
Smt.M.M.Deshmukh, APP for the State.

CORAM: J.H.BHATIA, J.
DATE : 16th April, 2007.

P.C.:

1. Heard Ms.Gauri Jadhav the learned counsel for the applicant and Mr.Joshi the learned counsel for the respondent no.1.

2. All these four applications are filed seeking leave to prefer appeal against the order of acquittal in four criminal cases filed under Section 138 of the Negotiable Instruments Act by the applicant against the respondent no.1.

3. To state in brief, it is the case of the applicant that sometimes in the year 1995 he had advanced certain amounts to the respondent as hand loan.

For the repayment of the said loans, 30 post dated cheques were issued by the respondent to the applicant . The cheques were presented for encashment but same were dishonoured and returned to the applicant on 21-5-2004. According to the applicant he received the said information on 24-5-2004 and he issued demand notice to the respondent on 21-6-2004. He failed to make the payment in spite of receipt of notice, therefore, he filed the complaints.

4. The learned trial Court acquitted the accused and dismissed the complaints mainly on 2 grounds. Firstly, the cheques were issued for the debt or the liability which was barred by the limitation. Secondly, the notice, which was issued by the applicant to the respondent, was also beyond the period of 30 days. This finding was given by the learned Magistrate on the ground that information was received by the applicant about dishonour of cheque on 21-6-2004 and not on 24-5-2005. As far as this point is concerned, it is the disputed question of the fact. The learned trial Court came to conclusion that there appears some overwriting and date 21st was made 24th. While according to the applicant the intimation from the bank that the cheque was dishonoured was received on 24-5-2004 and not on 21-5-2004. This aspect may require consideration.

5. After going through the evidence led by the parties and after perusal of the documents, as far as the existing debt or liabilities is concerned, there appears no fault in the approach of the trial Court. Admittedly loan was advanced in the year 1995. Date is not given. Under Article 21 of the Schedule of the Limitation Act, period of limitation for the suit for money lent under an agreement which shall be payable on demand is 3 years and the period begins to run when the loan is made. In view of this, period of limitation would begin to run on the date on which the loan was advanced by the applicant to the respondent. However, in view of Section 18 of the Limitation Act if before the expiration of prescribed period for a suit, an acknowledgment of liability has been made in writing, signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. From the date of such acknowledgment, if made in writing and before the expiry of limitation, fresh period of limitation begins to run and thus the period of limitation may be extended from time to time. Section 19 of the Limitation Act provides that where payment on account of a debt etc. is made before the expiration of the prescribed period of limitation, a fresh period of

limitation shall be computed from the time when the payment was made provided that an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment therefore. Thus if before the expiry of period of limitation debtor makes a payment and also acknowledged the payment in writing, fresh period of limitation begins. In this manner period of limitation may be extended from time to time. In the present matters applicant did not produce any documents to show that the respondent had acknowledged the liability to repay the loan amount before the expiry of limitation period or that he had actually made some repayment and had also acknowledged such repayment in writing. In view of this it is clear that in 2003 when the cheques were issued, his loan was barred by the limitation and it could not be enforced under the law.

6. Section 138 provides for punishment when a cheque has been drawn by a person for payment of any amount of money to another person for discharge of any debt or other liability provided certain other conditions laid down in the said section are fulfilled. Section 139 provides that unless the contrary is proved it shall be presumed, that the holder of the cheque received the cheque of the nature referred to in Section

138, for the discharge of any debt or other liability. Therefore, when the cheque is issued, there is presumption in favour of the payee. However, explanation to Section 138 makes it clear that for the purposes of this section "debt or the other liability" means a legally enforceable debt or other liability. In view of the facts of the present case, it is clear that when the cheque was issued in the year 2003, the debt was already barred by limitation and not enforceable under the law. Therefore, there was no legally enforceable debt or liability when the said cheque was issued. This fact is proved on the basis of evidence led by the complainant himself. In such circumstances, it is clear that the offence under Section 138 of the Negotiable Instruments Act was not made out and proved. In such circumstances the trial Court was justified to dismiss the complaint and acquit the accused.

7. For the aforesaid reasons, leave to prefer appeal refused. Applications stand rejected.

(J.H.Bhatia,J.)